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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

LAURIE KURT SHERMOEN,

Petitioner,

v.

THE SUPERIOR COURT OF  
RIVERSIDE COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

E048376

(Super.Ct.No. SWF026805)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Mark Mandio, Judge.

Petition granted.

Gary Windom, Public Defender, and William A. Meronek, Deputy Public  
Defender, for Petitioner.

No appearance for Respondent.

Rod Pacheco, District Attorney, and Ivy B. Fitzpatrick, Deputy District Attorney, for Real Party in Interest.

The court has read and considered the petition and the informal response filed by the Riverside County District Attorney. The district attorney concedes that the petition for writ of mandate should be granted. Accordingly, we have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

### BACKGROUND

Petitioner was arraigned on a felony information on January 5, 2009.

On March 2, 2009, petitioner's counsel requested a continuance to March 11. The request was granted and the last day for trial was March 11 or within 10 days thereafter—March 23.

On March 23, 2009, a panel of potential jurors was sworn and voir dire commenced.

The next day, the prosecution filed an amended information. On March 25, 2009, it moved to continue the case to April because the victim/witness was ill with pneumonia and was under doctor's orders not to leave her house for a week.

The trial court granted the motion, discharged the jury panel, and set the case for April 6, 2009.

On April 6, 2009, the trial court determined that a new 10-day period had begun so the last day for trial was April 16, 2009.

Petitioner moved to dismiss, arguing that the last day to which he consented was March 11, 2009. The continuance for good cause on March 25 was not with his consent so a new 10-day period did not start. The trial court denied the motion to dismiss, but stayed the order so that petitioner could seek writ review.

### DISCUSSION

Penal Code section 1382 provides in pertinent part as follows: “(a) The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases: [¶] . . . [¶] (2)(B) The defendant requests or consents to the setting of a trial date beyond the 60-day period. Whenever a case is set for trial beyond the 60-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.” (Pen. Code, § 1382.)

The trial court appeared to believe that once a defendant agrees to a continuance beyond the 60 days, then a 10-day grace period applies to any new trial date set. This conclusion is contrary to established authority, as the prosecution has now conceded in its informal response.

The statute provides that an action need not be dismissed if it is set for trial beyond the 60-day period with the consent of the defendant and if defendant is brought to trial within 10 days thereafter. The word “thereafter” refers back to the date the case was set with the defendant’s consent. (*Tudman v. Superior Court* (1972) 29 Cal.App.3d 129, 132–133 (*Tudman*).)

“Thereafter” in this case refers to March 11, 2009—the date set with petitioner’s consent. He never consented to a date beyond that. The April 6, 2009, date was set upon the prosecution’s showing of good cause. A new 10-day period cannot be tacked onto that date unless petitioner consented to it—which he did not. (*Barsamyan v. Appellate Division* (2008) 44 Cal.4th 960, 975-980; *Tudman, supra*, 29 Cal.App.3d at pp. 132-133.)

DISPOSITION

Let a peremptory writ of mandate issue directing the Superior Court of Riverside County to set aside its order denying petitioner’s motion to dismiss and to issue a new order dismissing the action pursuant to Penal Code section 1382.

Petitioner is DIRECTED to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

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MILLER  
J.

We concur:

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RAMIREZ  
P. J.

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GAUT  
J.